

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE VALVE ANTITRUST LITIGATION

Case No. 2:21-cv-00563-JCC

**VALVE CORPORATION’S UNOPPOSED
MOTION TO SEAL**

**NOTE ON MOTION CALENDAR:
NOVEMBER 15, 2023**

I. **RELIEF REQUESTED**

The documents and information sought to be sealed by this Motion contain [REDACTED]

[REDACTED]. Valve is cognizant that Local Rule 5(g) recognizes a strong presumption of public access to the court's files and encourages redaction whenever possible as an alternative to filing materials entirely under seal. However, Plaintiffs' Motion to Compel the In-Person Deposition of Gabe Newell presents the "rare circumstance" referred to in LCR 5(g)(5) in which briefs and supporting materials should be filed entirely under seal. Even if the portions of the briefing and supporting materials containing [REDACTED]

[REDACTED] More simply, no effective redaction is available [REDACTED].

Similarly, the Declaration of Charles Casper contains [REDACTED]

[REDACTED] which should also be sealed to protect their privacy.

Accordingly, pursuant to Local Civil Rule 5(g), Defendant Valve Corporation ("Valve") brings this motion to file the following materials under seal (hereafter the "**Sealed Materials**"):

- (1) The unredacted version of this Motion;
- (2) The parties' LCR 37 Submission Regarding Plaintiffs' Motion to Compel the In-Person Deposition of Defendant Valve Corporation's Chief Executive Officer Gabe Newell ("Plaintiffs' Motion to Compel");
- (3) Declaration of Gabe Newell ("Newell Decl.");
- (4) Declaration of Charles B. Casper ("Casper Decl.");

- (5) The unredacted version of the Declaration of Kenneth R. O'Rourke in Support of Plaintiffs' LCR 37 Submission Regarding Plaintiffs' Motion to Compel the In-Person Deposition of Defendant Valve Corp.'s Chief Executive Officer Gabe Newell ("O'Rourke Decl.");
- (6) Exhibits 3-7, 9, 10, 12, and 13 to O'Rourke Decl.; and
- (7) The unredacted versions of Exhibits 1, 2, and 11 to the O'Rourke Decl.

The documents and information Valve seeks to file under seal contain [REDACTED]

[REDACTED] and Valve's confidential business information.

In the alternative, if the Court declines to fully seal Plaintiffs' Motion to Compel or the other Sealed Materials that are requested to be sealed in their entirety, Valve requests leave to prepare substantially redacted versions for public filing.

II. STATEMENT OF FACTS

Valve files this Motion to Seal in connection with Plaintiffs' Motion to Compel. Valve must provide the Court with [REDACTED], as well as certain Valve highly confidential and proprietary business and employee information, to demonstrate why Plaintiffs' request to compel Mr. Newell's in-person deposition should be denied. Similarly, Plaintiffs submitted information relating to [REDACTED] as well as Valve's highly confidential business strategy, ownership structure, and partner relationships, to support their request to compel production. The parties included Mr. Newell's, and other third parties', highly sensitive and confidential information in the Sealed Materials, which Valve requests be sealed.

The basis for sealing is established in the accompanying materials: (1) the Newell Declaration; (2) the Declaration of Gavin Skok in Support of Valve's Motion to Seal ("Skok

Sealing Decl.”); and (3) the Declaration of Chris Schenck in Support of Valve’s Motion to Seal (“Schenck Sealing Decl.”). As explained in these supporting declarations, the following Sealed Materials contain [REDACTED], as well as information relating to Valve’s highly confidential business strategy, ownership structure, and partner relationships:¹

1. **Plaintiffs’ Motion to Compel** contains (i) extensive disclosure and discussion of [REDACTED], and (ii) Valve’s highly confidential information relating to its business strategies, ownership structure, and partner relationships. Newell Decl. ¶ 37; Schenck Sealing Decl. ¶ 4.a.
2. **O’Rourke Decl. Ex. 1** is an email thread between the parties’ counsel dated between September 8, 2023, and November 2, 2023, related to the deposition of Gabe Newell and others with a subject of “RE: Valve AT Plaintiff Counsel – Re: Valve Employee Depositions,” which contains [REDACTED], as well as information regarding other Valve employees, as is apparent from the face of the email thread.
3. **O’Rourke Decl. Ex. 2** is Plaintiffs’ Notice of Fed. R. Civ. P. 30(b)(1) Deposition of Gabe Newell dated November 1, 2023. Portions of the notice disclose [REDACTED], as is apparent from the face of the document.
4. **O’Rourke Decl. Ex. 3** is excerpts from the transcript of the October 12, 2023 Fed. R. Civ. P. 30(b)(1) deposition of Scott Lynch (Valve’s Chief Operating

¹ The showing of good cause in these materials is based on both the information specifically cited and relied upon by Plaintiffs and other information that is contained in the submitted excerpts, even if not necessarily cited or relied upon by Plaintiffs.

Officer) that contain testimony revealing (i) [REDACTED],
 [REDACTED],
 and (ii) Valve's highly confidential information relating to its business strategies
 and products. Valve designated all such testimony "Highly Confidential –
 Attorney's Eyes Only" under the Protective Order at the time of the deposition.
 Schenck Sealing Decl. ¶ 4.b.

5. **O'Rourke Decl. Ex. 4** is excerpts from the transcript of the October 24, 2023 deposition of Ricky Uy, a Valve employee, which contain testimony revealing Valve's highly confidential information regarding decision-making processes, corporate internal structure, and contract negotiations and which Valve designated "Highly Confidential – Attorney's Eyes Only" under the Protective Order at the time of the deposition. Schenck Sealing Decl. ¶ 4.c.
6. **O'Rourke Decl. Ex. 5** is excerpts from the transcript of the October 5, 2023 deposition of Kassidy Gerber, a Valve employee, which contain testimony revealing Valve's highly confidential information regarding decision-making processes and corporate internal structure and which Valve designated "Highly Confidential – Attorney's Eyes Only" under the Protective Order at the time of the deposition. Schenck Sealing Decl. ¶ 4.d.
7. **O'Rourke Decl. Ex. 6** is excerpts from the transcript of the October 4, 2023 deposition of Nathaniel Blue, a Valve employee, which contain testimony revealing Valve's highly confidential information regarding Valve's corporate internal and decision-making structure, as well as Mr. Blue's personal compensation, and which Valve designated "Highly Confidential – Attorney's Eyes Only" under the Protective Order at the time of the deposition. Schenck Sealing Decl. ¶ 4.e.

- 1 8. **O’Rourke Decl. Ex. 7** is excerpts from the transcript of the September 26, 2023
2 deposition of Erik Johnson, a Valve employee, which contain testimony
3 revealing Valve’s highly confidential information regarding Valve’s products,
4 confidential dealings and interactions with other companies, its internal business
5 strategies, and its decision-making process and corporate structure, and which
6 Valve designated “Highly Confidential – Attorney’s Eyes Only” under the
7 Protective Order at the time of the deposition. Schenck Sealing Decl. ¶ 4.f.
- 8 9. **O’Rourke Decl. Ex. 9** is excerpts from the transcript of the October 13, 2023
9 Fed. R. Civ. P. 30(b)(6) deposition of Scott Lynch (Valve’s Chief Operating
10 Officer) that contain testimony revealing Valve’s highly confidential Board
11 discussions, decision-making process and structure, as well as its ownership,
12 valuation, and personal stock ownership by several employees, and which Valve
13 designated “Highly Confidential – Attorney’s Eyes Only” under the Protective
14 Order at the time of the deposition. Schenck Sealing Decl. ¶ 4.g.
- 15 10. **O’Rourke Decl. Ex. 10** is excerpts from the transcript of the October 3, 2023
16 deposition of Kristian Miller, a Valve employee, which contain testimony
17 revealing information relating to Valve’s corporate internal structure, business
18 decisions and decision-making, as well as Valve’s confidential dealings with
19 other companies, which Valve designated “Highly Confidential – Attorney’s
20 Eyes Only” under the Protective Order at the time of the deposition. Schenck
21 Sealing Decl. ¶ 4.h.
- 22 11. **O’Rourke Decl. Exs. 11-13** are excerpts from Valve’s responses to Plaintiffs’
23 Interrogatories, which reveal Valve’s highly confidential information regarding
24 decision-making and corporate structure, confidential operational and business
25 strategy information, product development information, and information
26

1 regarding individual employees who are not parties, and which Valve designated
2 as “Confidential” under the Protective Order. Schenck Sealing Decl. ¶ 4.i.

3 12. **O’Rourke Declaration** ¶¶ 4–6 disclose [REDACTED]

4 [REDACTED]. Newell Decl. ¶ 37.

5 13. The **Newell Declaration** provides extensive information and detail regarding [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 Newell Decl. ¶ 37.

12 14. The **Casper Declaration** discloses [REDACTED]

13 [REDACTED], as is apparent from the face of the
14 document.

15 15. This **Motion to Seal** includes discussion of [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]. Accordingly,
21 Valve seeks to keep under seal the unredacted portion of this Motion to Seal.

22 Public disclosure of the information in the Sealed Materials would significantly harm [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 Further, Valve is a privately held company with no outside shareholders or lenders that
8 is not subject to public regulatory reporting and auditing requirements. Schenck Sealing Decl.
9 at ¶ 4. Valve does not publicly disclose its corporate structure and decision-making
10 information or publicly disclose its business strategies, including, but not limited to, the
11 information in the Sealed Materials. *Id.* Indeed, Valve has chosen to stay private in part to
12 avoid the intrusiveness and competitive harm that would come from publicly disclosing and
13 reporting this type of operational and strategic information.

14 Moreover, Valve derives a significant value from the confidentiality of this information
15 and zealously protects its confidentiality. Schenck Sealing Decl. ¶ 5. Valve has expended
16 significant resources and implemented strict measures to prevent disclosure of the information
17 disclosed in the Sealed Materials and similar highly confidential information, including by storing
18 such information under password protection on internal Valve servers, limiting access to certain of
19 the information described above to certain Valve employees with a specific need to know, and not
20 making such information publicly available (including to any outside investors or lenders, which
21 Valve does not have). *Id.* The highly confidential Valve information in the Sealed Materials
22 would not be available in the ordinary course of business to Valve's competitors or the public. *Id.*

23 Public disclosure of the information in the Sealed Materials would significantly harm
24 Valve's competitive standing by providing substantial and unfair insight into Valve's operations,
25 business strategies, and business relationships. Schenck Sealing Decl. ¶ 6.
26

1 Because of these confidentiality issues:

2 (1) Where possible, Valve (a) redacted from publicly-filed materials [REDACTED]
 3 [REDACTED]
 4 [REDACTED] as well as Valve's highly confidential business strategy,
 5 corporate structure and decision-making, and partner related information, then (b)
 6 filed unredacted versions under seal. This applies to the O'Rourke Declaration,
 7 Exhibits 1-2, and 11 to the O'Rourke Declaration, and this Motion to Seal (Skok
 8 Sealing Decl. ¶ 5); and

9 (2) Where redaction would not sufficiently protect [REDACTED]
 10 [REDACTED] or Valve's highly confidential business
 11 information due to the large volume of such information or because the nature of the
 12 issues discussed would in effect reveal such information, Valve filed such materials
 13 entirely under seal. This applies to:

- 14 a) Plaintiffs' Motion to Compel;
- 15 b) The Newell Declaration;
- 16 c) The Casper Declaration; and
- 17 d) Exhibits 3-7, 9, 10, 12, and 13 to the O'Rourke Declaration.

18 Skok Sealing Decl. ¶¶ 5–6. The majority of the Sealed Materials were also designated as
 19 “Highly Confidential – Attorney’s Eyes Only” under the Protective Order (Dkt. # 95) as
 20 described above or contain information from documents designated “Highly Confidential –
 21 Attorney’s Eyes Only.”

22 Pursuant to Local Rule 5(g)(3)(A), Valve’s counsel conferred with Plaintiffs’ counsel in
 23 good faith by videoconference on November 14, 2023 regarding the need to file the Sealed
 24 Materials under seal and provided a copy of this Motion to Plaintiffs in advance of filing. Skok
 25 Sealing Decl. ¶ 3. Plaintiffs told Valve they do not oppose Valve’s Motion to Seal. *Id.* ¶ 4.
 26

III. ARGUMENT

Although there is a strong presumption of public access to the court's files, the Ninth Circuit has "carved out an exception for sealed materials attached to a discovery motion unrelated to the merits of a case," requiring only a showing of "good cause" to overcome this presumption. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (internal citations and quotations omitted). Such "good cause" may include protecting "a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c)(1). The Court may permit sealing and redacting of documents to protect confidential information, including "a trade secret or other confidential research, development, or commercial information." Fed. R. Civ. P. 26(c)(G); *see also* Fed. R. Civ. P. 5.2(d) (relating to sealing of filings).

Parties may use protective orders to prevent disclosure of



1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 Further, courts have held compelling reasons exist to seal documents that may be used
6 as “sources of business information that might harm a litigant’s competitive standing.” *Ctr. for*
7 *Auto Safety*, 809 F.3d at 1097 (citation omitted); *Int’l News Inc. v. 10 Deep Clothing Inc.*, No.
8 C18-0302-JCC, 2020 WL 5981643, at *5 (W.D. Wash. Oct. 8, 2020) (sealing “confidential
9 financial information, the disclosure of which would harm the parties’ competitive standing in
10 their industry”); *Edifecs, Inc. v. Welltok, Inc.*, No. C18-1086-JLR, 2019 WL 5618822, at *2 (W.D.
11 Wash. Oct. 31, 2019) (sealing “confidential business information that could put [party] at a
12 competitive disadvantage” if disclosed). Accordingly, courts regularly grant leave to file
13 confidential and proprietary business strategy information under seal. *See, e.g.; J.R. Simplot*
14 *Co. v. Washington Potato Co.*, No. C16-1851RSM, 2016 WL 11066581, at *1 (W.D. Wash.
15 Dec. 29, 2016) (granting motion to seal financial, pricing, and strategic planning information).

16 Good cause exists to file the Sealed Materials under seal. The Sealed Materials contain

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 establishes good cause to maintain the Sealed Materials under seal to protect them from
24 annoyance, embarrassment, oppression, or undue burden. Fed. R. Civ. P. 26(c).

25 The Sealed Materials also contain highly confidential and proprietary information
26 relating to Valve’s business strategy, ownership structure, and partner relationships that Valve

1 does not publicly disclose. Schenck Sealing Decl. ¶¶ 3–5. Valve derives significant value from
2 the confidentiality of such information and zealously protects it, including through storage on
3 secure servers that are password protected and accessible only to a limited group of Valve
4 employees and officers that have a specific need to access this information. Schenck Sealing
5 Decl. ¶ 5. Good cause further exists because, as described above, public disclosure of the
6 information in the Sealed Materials would significantly harm Valve’s competitive standing. *Id.* ¶¶
7 7-8.

8 In preparing the Sealed Materials for public filing, and where practicable, Valve was
9 careful to redact only the portions of the O’Rourke Declaration, Exhibits 1-2, and 11 thereto,
10 and this Motion to Seal that contain Mr. Newell’s, or other third parties’, [REDACTED]
11 [REDACTED], as well as Valve’s confidential business strategy,
12 corporate structure, and partner relationship related information. Skok Sealing Decl. ¶ 5.
13 However, the remainder of the Sealed Materials were filed under seal in their entirety because
14 they contain an overwhelming amount of Mr. Newell’s (or other third parties’) highly private
15 and sensitive confidential information and/or information relating to Valve’s confidential
16 business strategy, corporate structure, and partner relationships, which made redacting
17 impractical. *Id.* ¶ 6. Less restrictive alternatives would not sufficiently protect Mr. Newell’s,
18 the identified third parties, or Valve’s highly private and sensitive confidential information. *Id.*
19 ¶ 7.

20 Good cause exists to seal the Sealed Materials and there is no relief short of sealing this
21 carefully selected and designated information that would sufficiently protect Mr. Newell, the
22 other third parties, or Valve from the significant threat of harm (i.e., unwarranted annoyance,
23 embarrassment, oppression, and undue burden) from their public disclosure.
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IV. CONCLUSION

For the reasons stated above, Valve respectfully requests that the Court grant Valve's motion to seal and order that the following Sealed Materials remain under seal:

- (1) Plaintiffs' Motion to Compel;
- (2) The Newell Declaration;
- (3) The Casper Declaration;
- (4) The unredacted version of the O'Rourke Declaration;
- (5) The unredacted versions of Exhibits 1, 2, and 11 to the O'Rourke Decl;
- (6) Exhibits 3-7, 9, 10, 12, and 13 to the O'Rourke Declaration; and
- (7) The unredacted version of this Motion to Seal.

In the alternative, if the Court declines to fully seal Plaintiffs' Motion to Compel or the other Sealed Materials that are requested to be sealed in their entirety, Valve requests leave to prepare substantially redacted versions for public filing.

A Proposed Order is submitted herewith.

DATED this 15th day of November, 2023.

FOX ROTHSCHILD LLP

s/ Gavin W. Skok

Gavin W. Skok, WSBA #29766
1001 Fourth Avenue, Suite 4400
Seattle, WA 98154
Telephone: (206) 624.3600
Facsimile: (206) 389-1708
Email: gskok@foxrothschild.com

Kristen Ward Broz
FOX ROTHSCHILD LLP
2020 K. St. NW, Ste. 500
Washington, DC 20006
Telephone: (202) 794-1220
Fax: (202) 461-3102
Email: kbroz@foxrothschild.com

1 Nathan M. Buchter
2 FOX ROTHSCHILD LLP
3 2000 Market Street, 20th Floor
4 Philadelphia, PA 19103
5 Telephone: (215) 299-3010
6 Email: nbuchter@foxrothschild.com

7 MONTGOMERY McCRACKEN WALKER
8 & RHOADS LLP

9 *s/ Charles B. Casper*

10 Charles B. Casper, *admitted pro hac vice*

11 Robert E. Day, *admitted pro hac vice*

12 Peter Breslauer, *admitted pro hac vice*

13 Jessica Rizzo, *admitted pro hac vice*

14 1735 Market Street, 21st Floor

15 Philadelphia, PA 19103

16 Telephone: (215) 772-1500

17 Facsimile: (215) 772-7620

18 Email: ccasper@mmwr.com

19 rday@mmwr.com

20 pbreslauer@mmwr.com

21 jrizzo@mmwr.com

22 *Attorneys for Defendant*

23 **CERTIFICATION**

24 I certify that the foregoing memorandum
25 contains 3,414 words in compliance with the
26 Local Civil Rules.

CERTIFICATE OF SERVICE

I certify that I am a secretary at the law firm of Fox Rothschild LLP in Seattle, Washington. I am a U.S. citizen over the age of eighteen years and not a party to the within cause. On the date shown below, I caused to be served a true and correct copy of the foregoing on counsel of record for all other parties to this action as indicated below:

Service List

Alicia Cobb, WSBA #48685
 QUINN EMANUEL URQUHART & SULLIVAN, LLP
 1109 First Avenue, Suite 210
 Seattle, Washington 98101
 Telephone (206) 905-7000
 Fax (206) 905-7100
 aliciacobb@quinnemanuel.com

- ☐ Via US Mail
☐ Via Messenger
☒ Via CM/ECF / Email
☐ Via over-night delivery

Steig D. Olson (*pro hac vice*)
 David LeRay (*pro hac vice*)
 Andrew Faisman (*pro hac vice*)
 QUINN EMANUEL URQUHART & SULLIVAN, LLP
 51 Madison Avenue
 New York, New York 10010
 Telephone (212) 849-7231
 Fax (212) 849-7100
 steigolson@quinnemanuel.com
 davidleray@quinnemanuel.com
 afaisman@quinnemanuel.com

Adam Wolfson (*pro hac vice*)
 QUINN EMANUEL URQUHART & SULLIVAN, LLP
 865 S. Figueroa St., 10th Floor
 Los Angeles, California 90017
 Telephone (213) 443-3285
 Fax (213) 443-3100
 adamwolfson@quinnemanuel.com

Charles Stevens (*pro hac vice*)
 QUINN EMANUEL URQUHART & SULLIVAN, LLP
 50 California St., 22nd Floor
 San Francisco, CA 94111
 Telephone (415) 875-6600
 Fax (415) 875-6700
 charliestevens@quinnemanuel.com

Interim Co-Lead Counsel

David Golden (*pro hac vice*)
 CONSTANTINE CANNON LLP
 1001 Pennsylvania Ave., 22nd Floor
 Washington, D.C. 20004
 Telephone (202) 204-4527
 Fax (202) 204-3501
 dgolden@constantinecannon.com

A. Owen Glist (*pro hac vice*)
 Ankur Kapoor (*pro hac vice*)
 Jeffrey I. Shinder (*pro hac vice*)
 Matthew Koenig
 CONSTANTINE CANNON LLP
 335 Madison Avenue, 9th Floor
 New York, NY 10017
 Telephone (212) 350-2700
 Fax (212) 350-2701
 oglist@constantinecannon.com

Stephanie L. Jensen, WSBA #42042
 WILSON SONSINI GOODRICH & ROSATI P.C.
 701 Fifth Avenue, Suite 5100
 Seattle, WA 98104-7036
 Telephone (206) 883-2500
 Fax (206) 883-2699
 sjensen@wsgr.com

Tyre L. Tindall, WSBA #56357
 WILSON SONSINI GOODRICH & ROSATI P.C.
 701 Fifth Avenue, Suite 5100
 Seattle, WA 98104-7036
 Telephone (206) 883-2500
 Fax (206) 883-2699
 ttindall@wsgr.com

Kenneth R. O'Rourke (*pro hac vice*)
 Scott A. Sher (*pro hac vice*)
 Allison B. Smith (*pro hac vice*)
 WILSON SONSINI GOODRICH & ROSATI, P.C.
 1700 K Street, NW, Suite 500
 Washington, DC 20006
 Telephone (202) 973-8800
 Fax (202) 973-8899
 korourke@wsgr.com
 ssher@wsgr.com
 allison.smith@wsgr.com

W. Joseph Bruckner (*pro hac vice*)
 Joseph C. Bourne (*pro hac vice*)
 LOCKRIDGE GRINDAL NAUEN P.L.L.P.
 100 Washington Avenue S, Suite 2200
 Minneapolis, MN 55401
 Telephone: (612) 339-6900
 Fax: (612) 339-0981
 wjbruckner@locklaw.com
 jcbourne@locklaw.com

Interim Co-Lead Counsel


Kenneth J. Rubin (*pro hac vice*)
 Timothy B. McGranor (*pro hac vice*)
 Kara M. Mundy (*pro hac vice*)
 VORYS, SATER, SEYMOUR AND
 PEASE LLP
 52 East Gay Street
 Columbus, Ohio 43215
 Telephone (614) 464-6400
 Fax (614) 719-4796
 kjrubin@vorys.com
 tbmcgranor@vorys.com
 kmmundy@vorys.com

Thomas N. McCormick (*pro hac vice*)
 VORYS, SATER, SEYMOUR AND
 PEASE LLP
 4675 MacArthur Court, Suite 700
 Newport Beach, California 92660
 Phone (949) 526-7903 | Fax (949) 383-2384
 tnmcormick@vorys.com

Executive Committee

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED this 15th day of November, 2023, in Seattle, Washington.


 Courtney R. Brooks